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Organisational integration of a VAT group

The finance ministry has amended the VAT group provisions of its VAT Implementation Decree to take account of recent European and Supreme Tax Court cases.

A VAT group is conditional on financial (common shareholding of at least 50%), organisational and business integration. Organisational integration means that the subsidiary must follow the instructions of the parent without being able to develop a will of its own. Business integration means that the business of the subsidiary must support or complement that of the parent. Consequently a company without an active business (e.g. an intermediate holding company) cannot be a VAT group member. However, the ECJ held a year ago that the VAT Directive does not exclude a non-business from membership of a VAT group merely for that reason alone (case C-85/11 *Commission v. Ireland* judgment of April 9, 2013). The Supreme Tax Court has also tightened its organisational requirements on a subsidiary to qualify as a group member. Under the new definition it is no longer sufficient to show that the subsidiary cannot develop a will of its own. The parent must be able to enforce its own will at all times. This can be through common directors, or through the appointment of an employee of the parent as managing director of the subsidiary (judgment VR 18/13 of August 8 2013).

The finance ministry has now taken the view that the ECJ case cited permits but does not require a member state to allow non-businesses into a VAT group. It therefore stands by its previous interpretation of German law. Accordingly, it has amended the VAT Implementation Decree to require a more definite involvement of the parent in the management of the subsidiary. This involvement can be through an associated company outside the VAT group, although the involvement does not bring a non-business associate into the group.

Keywords

Organisational integration, VAT group, group member